

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	09/436,347	Group Art Unit:	1643
Confirmation No.:	6491	Examiner:	A.M. Harris
Filed:	9 November 1999		
Inventor:	Christine A. WHITE <i>et al.</i>		
For:	Treatment of Chronic Lymphocytic Leukemia using Anti-CD20 Antibodies (as amended)		

Mail Stop **RCE**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF HOLDING OF ABANDONMENT

Sir:

Applicant requests that the examiner reconsider the holding that this application is abandoned, as reflected in the Notice of Abandonment mailed on 12 July 2006. For the reasons set forth below, applicant submits that the application is not abandoned in fact.

Applicant understands that should the Primary Examiner agree that the application is not abandoned in fact, she has the authority to withdraw the Notice of Abandonment. See M.P.E.P. §§ 711.03 and 711.03(b). However, should the Office determine that the present request for reconsideration should be by way of petition, the Director is requested to treat this paper as a petition under 37 C.F.R. § 1.181(a)(1).

Applicant believes that no fee is due in connection with this request. The Director is nevertheless authorized to charge any fee required for consideration of this paper to our Deposit Account No. 18-1260.

Facts

1. A final rejection in the captioned application was mailed on 7 July 2005.
2. Applicant filed a timely Notice of Appeal, together with a three-month extension of time under 37 C.F.R. § 1.136(a), on 6 January 2006. Thus, an appeal brief was originally due on 6 March 2006.
3. A Notice of Abandonment, stating that the application was abandoned for applicant's failure to file a response to the final rejection mailed on 7 July 2005, was mailed on 12 July 2006.
4. Applicant's undersigned representative contacted the examiner to discuss the Notice of Abandonment. In a telephone interview on 27 July 2006, the examiner agreed that the period for response could properly be extended by five months from the original due date of 6 March 2006. The undersigned advised the examiner that a timely RCE would be filed together with an appropriate request for reconsideration or petition regarding withdrawal of the Notice of Abandonment.
5. Concurrently with the present request for reconsideration, applicant is filing a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 and a petition under § 1.136(a) to extend the current period for response by five months, to and including 7 August 2006 (the first business day following Sunday, 6 August).

Discussion

37 C.F.R. § 41.37(a)(1) provides that an appeal brief must be filed within two months of the filing of a Notice of Appeal, and § 41.37(e) provides that the time periods stated in that section are extendible under the provisions of § 1.136(a). Section 1.136(a)(1), in turn, provides that with enumerated exceptions, a period for reply may be extended up to five months, provided that any applicable statutory maximum period is not exceeded.

None of the exceptions enumerated in §1.136(a)(1) applies to the concurrently-filed petition to extend the period for response. The time for filing an appeal brief under § 41.37 is

not limited by statute, and thus the maximum five-month extension is available under § 1.136(a). Finally, § 1.114(d) provides that an RCE is a proper reply in an appealed case prior to a decision on an appeal.

The concurrently-filed RCE and petition for extension under § 1.136(a) constitute a timely and complete response to the outstanding Office action. Thus, notwithstanding the mailing of a Notice of Abandonment, the present application is not abandoned in fact.

Conclusion

The examiner is requested to reconsider the holding of abandonment and withdraw the Notice of Abandonment mailed on 12 July 2006.

Respectfully submitted,

/David L. Fitzgerald/

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